IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court No.3

Criminal Misc. Application No. 166/2002

Lekh Raj and another ..... Petitioners.

Vs.

State of Uttaranchal and others ..... Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri Jitendra Chaudhary learned counsel for the petitioners and Sri H.C. Pandey learned A.G.A. for the State and perused the record.

2- This is a petition under section 482 of the Code of Criminal Procedure (for short 'Code') for quashing of the charge sheet in case crime No. 149/2002 under sections 427, 504 and 506 I.P.C. P.S. Bajpur District Udham Singh Nagar and to further stay the proceedings in criminal trial No. 801/2002 pending before the Chief Judicial Magistrate Kashipur, District Udham Singh Nagar.

3- The learned counsel for the petitioners submitted that the allegations of the F.I.R. do not disclose any cognizable offence and that the allegations made in it are per se false and fictious because the compalinant was not in possession of the plot in question on the alleged date of the occurrence i.e. 8.3.2002 and that no sugar-cane crop was then standing in the said plot. Learned counsel drew attention to the order dated 25.2.2002 passed by this court in writ petition No. 24 (M/S)/2002, Jogendra Singh and other Vs. II Additional District Judge, Udham Singh Nagar and others (Annexure-3) to bring home his point of view that the court even passed the order that the possession of the land in dispute was to be delivered to the party of the present petitioners. The learned counsel also pointed out to the judgment dated 11.1.2002 passed by II Additional District Judge, Udham Singh Nagar in Misc. Appeal No. 105/2002 which was filed by the petitioners against granting of injunction order by the trial court in civil suit No. 69/2000. It was therefore contended that the allegations made in the F.I.R. regarding the possession of the complainant, sowing and rearing of the sugar-cane crop by him is false. It

was further submitted that the falsity of the allegations is evidenced from the fact that the petitioner No.2 who was also nominated as one of the accused was prosecuting his studies regularly in Banglore and certificate to this effect that he was regular in his classes during March 2002 has been filed on record as Annexure-6.

5- Having gone through the entire evidence and particularly the order of the court passed on 25.2.2002 it is evident that on that day admittedly the crop of sugar-cane was there in the plot and the petitioners i.e. the complainant was held entitled to harvest the same. This indicate that the respondents (petitioners) have had no concern with the crop sown and reared in the plot at that time and, therefore, it can not safely be accepted at this stage that the petitioners were in possession of the plot in question. Even otherwise it is argued that the petitioners have purchased the share of co-tennure holder of the plot but the allegations are missing regarding any pendency of the partition suit in the revenue court. Without a proper partition the petitioners could not have obtained possession of any specific portion of joint holding and, therefore, on this account also the submission made by the learned counsel is without any conviction.

6- The allegations made in the F.I.R. are specific and they pertain to commission of a cognizable offence. This court neither will embark upon the inquiry as to whether the allegations made therein shall be established against the petitioners by the evidence to be adduced nor will assess the sufficiency and realiability of the evidence of the complainant to be produced in the criminal case. This aspect of the matter shall remain in the domain of the trial court where the petitioners shall have opportunity to put forward their defence and an opportunity to assail the claim and allegations made by the complainant.

7- Having gone through these aspects and considering the allegations made in the F.I.R. which per se disclose the commission of the offence and on the basis of which the charge sheet has been submitted, I do not find any merit in this petition and the same is liable to be dismissed.

8- The petition is dismissed. The stay order dated 11-6-2002 is vacated.

Dated: 19.11.2003 (**Irshad Hussain, J)**
ISB